

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) NO. 15-CR-42-CVG-RM
)
)
WAYNE A.G. JAMES,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT

JURY TRIAL

AUGUST 15, 2018

BEFORE: THE HONORABLE CURTIS V. GOMEZ,
District Judge

APPEARANCES: OFFICE OF THE UNITED STATES ATTORNEY

BY: DELIA SMITH, AUSA
AMANDA R. VAUGHN, AUSA
LUKE CASS, AUSA

For the Government

OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: OMODARE JUPITER, ESQ.

For the Defendant

COURT REPORTER: PERSHA STOUTT-WARNER, RMR
Official Court Reporter
Virgin Islands District Court
St. Thomas, Virgin Islands

PROCEEDINGS

(Court called to order at 9:22 a.m.)

THE CLERK: United States of America versus
Wayne James.

THE COURT: Who is here?

ATTORNEY JUPITER: Good morning, Your Honor.
Omodare Jupiter for Wayne James. He is not present. We
waived his appearance for purposes of the hearing.

THE COURT: Attorney Jupiter, the Court notes
that your brother and sister on the other side, they are
not here. Do you have any idea where they are or what?

ATTORNEY JUPITER: No, Your Honor. I got the
call from the courtroom deputy; I rushed to get my
courtroom clothes on and get on over here.

THE COURT: Well, I apologize for the
inconvenience. I think we're going to have to make an
inquiry to find out why the U.S. Attorney's Office isn't
here. I'll ask you to be patient and we'll -- hopefully
we'll be able to resolve this fairly shortly.

ATTORNEY JUPITER: Sure, Your Honor.

[Recess.]

[Back on the record.]

THE CLERK: United States of America versus
Wayne James.

ATTORNEY SMITH: Good morning, Your Honor.

1 Delia Smith appearing on behalf of the United States.

2 THE COURT: Good morning.

3 ATTORNEY JUPITER: Good morning. Omodare
4 Jupiter, appearing on behalf of Wayne James, who is not
5 present. We waived his presence.

6 THE COURT: Okay. Good morning, Attorney.
7 There were a few lingering issues I thought we could
8 tend to this morning. The first would be with respect
9 to the exhibits that were under advisement. Those that
10 are under 403 will not be included, so the record is
11 clear.

12 The second matter is a matter, as I noticed in
13 reviewing the record, that defense had raised at a
14 sidebar that hadn't been addressed. You had moved for a
15 mistrial, Attorney Jupiter. You want to be heard on
16 that, as to why?

17 ATTORNEY JUPITER: Yes. Yes, Your Honor. I
18 think I would just go on what the Court's comments were
19 with regards, to the comments with regards to how the
20 government was advised what the Court's ruling was going
21 to be, that is, with respect to the matters surrounding
22 the appeal bond. Now the government did, after the
23 Court advised the government in the morning, as well as
24 at sidebar -- and the record is very clear the Court
25 laid out all the times that the government was advised

1 with regard to any testimony regarding the appeal bond,
2 that when they brought in Attorney Groner as a witness
3 they advised, the Court advised the government in detail
4 that it doesn't want to go into any matters regarding
5 the appeal bond.

6 Attorney Groner, I didn't understand why he was
7 still on the witness stand after we came back, when the
8 Court advised he was not going, that those matters were
9 not going to be gone into, nevertheless, the jury saw
10 him come on the stand. And the jury came back, saw him
11 on the stand again and then the government said no
12 questions, after the Court had indicated that he would
13 not be testifying. Then the government brought in
14 another witness that was on the same matter.

15 Now, the government did ask the Court to approach
16 but the Court's procedure here is that the Court would
17 not entertain bench conferences. And that's why the
18 Court has conferences outside of, outside of the regular
19 course of trial because the Court does not usually want
20 to have bench, sidebar conferences during the trial
21 while the jury is seated. I think it is for the reason
22 we don't want the jury to think that we're hiding
23 something from them. And that's, I think, the effect
24 that that had over and over again, that the defense was
25 keeping the government from bringing some information to

1 the jury the jury may or may not have thought was
2 useful. So, that's the whole idea of having matters be
3 taken care of while the jury is not here, so it doesn't
4 have that kind of effect. And I think it had that kind
5 of effect over and over again, particularly since the
6 defense raised matters pretrial.

7 In my opinion Your Honor should have, we should
8 have just had a ruling that would say how the Court was
9 going to rule at some point on that evidence, rather
10 than defense attorney continually standing up saying
11 objection, objection, objection. Because after a while
12 it gives the jury, I think, an effect that the defense
13 is keeping, one of the sides is keeping information from
14 getting out and it's information that -- even though the
15 Court instructed the jury that they are not to take
16 anything into that cumulatively it has that effect when
17 they are exposed to the actual objection over and over
18 again.

19 So, I think that coupled with the government asking
20 the same question over and over that was objected to and
21 trying to admit exhibits, asking the same foundational
22 questions throughout the trial had a cumulative effect,
23 a negative effect on the jury. So, that's why we moved
24 for a mistrial.

25 THE COURT: All right. Just so I'm clear then,

1 is the nature of your petition one that asserts that
2 there is what, misconduct and the jury was exposed to
3 certain evidence that they ought not to have been
4 exposed to? Is it the first, the second, or both, or
5 something else?

6 ATTORNEY JUPITER: I can't say that the jury,
7 they were -- I can't say the jury was exposed to
8 evidence that it was not supposed to be exposed to.
9 There were probably some foundational, more than
10 foundational questions that came in substantively, I
11 think, particularly with the custodian of records from
12 the bank. And it escapes me as to which bank. I think
13 it was Banco Popular, the witness who came in after
14 Attorney Groner. I think she did actually have --

15 THE COURT: I believe that was Chumney. And I
16 don't think she was Banco Popular. I believe Perez was
17 Banco Popular.

18 ATTORNEY JUPITER: Ms. Perez. That's correct.
19 And I believe she did actually give some substantive
20 testimony that was in violation of the Court's rules.
21 So, I would say that there was some evidence that was
22 improperly brought before the jury.

23 THE COURT: Okay. So, this is not, or is it,
24 an allegation of some misconduct that warrants a
25 mistrial?

1 ATTORNEY JUPITER: I would have to say that it
2 is misconduct, Your Honor.

3 THE COURT: All right. Let me hear from the
4 government. Attorney Smith.

5 ATTORNEY SMITH: Your Honor, there is
6 absolutely no basis for the Court to entertain any
7 motions from the defense regarding mistrial. The United
8 States was instructed at the beginning of this trial
9 that nothing, no evidence regarding the \$18,000 bond was
10 to be used in our opening. We excluded that. The
11 United States was subsequently advised by the Court that
12 the evidence that would have brought the actual Order
13 from the Appellate Division of the District Court from
14 the Superior Court's appeal, that that was inadmissible,
15 and that the testimony regarding that litigation was
16 also inadmissible. As such, Mr. Groner was excused. He
17 didn't even say his name. Nothing came, was uttered
18 from Mr. Groner, nor were any questions asked by the
19 government of Mr. Groner.

20 Secondly, when the -- I think her name was Indira.
21 Her last name escapes me. But when --

22 THE COURT: Chumney.

23 ATTORNEY SMITH: Chumney. When Miss Chumney
24 took the stand the only questions asked of her were
25 regarding foundational questions. And then the Court

1 interrupted and inquired whether or not in any way -- at
2 sidebar the Court inquired whether or not this witness
3 would testify about the payment or anything going back
4 to the \$18,000 transaction that stemmed from the appeal
5 of the District Court. Again, the Court decided that
6 this was, in fact, the same type of evidence that it had
7 ruled upon earlier and, again, the United States asked
8 that Miss Chumney be excused and she was excused. So,
9 the issue of misconduct, Your Honor, I think, is a
10 nonissue.

11 Secondly, the Court performed its gatekeeping
12 function by making sure that the defendant got a fair
13 trial. Everything that the Court did was intended to
14 safeguard Mr. James from ever having being unduly
15 prejudiced by anything that the United States -- even
16 though our feelings were that it was, in fact, fair
17 evidence, we adhered to all of the decisions made by the
18 Court and respected the Court's gatekeeping function to
19 protect the defendant. And I don't know where the Court
20 could rely on any acts by the government that would
21 amount to a misconduct claim, nor could the Court review
22 anything that occurred in this trial that would be even
23 considered improper evidence for the jury while they sat
24 for the two days that we presented evidence.

25 So, we just feel, Your Honor, that this is a

1 baseless claim made by the defense. We understand that
2 the defense --

3 THE COURT: Well, should I be assuming, for the
4 sake of argument, that there was no evidence that was
5 placed before the jury that would, that should not have
6 been there, that is, the Court arrested that before that
7 could happen? And the that to which I refer is the
8 evidence, for the sake of argument, if not, that's not
9 the issue that defense hangs its hat on, but more the
10 issue of misconduct. That is, did the government do
11 something, tried to slip something in there that it was
12 specifically instructed not to?

13 As I suspect, the reason for the petition, as I was
14 looking through the record this morning, it was probably
15 the fifth time, fourth or fifth time, that I had said
16 don't go there. In fact, I think I had told the
17 government in opening statement don't mention the
18 \$18,000. The Court assessed the evidence as it came in,
19 and I think by the end, or in the afternoon on the first
20 day the Court instructed not to delve into the Appellate
21 Division matter. And to be sure that the message was
22 received I believe I asked Counsel to come to chambers
23 on the second day in the morning to let counsel know, do
24 not get into the Appellate Division matter in any way,
25 in any form, at any angle. And I think I used the term,

1 if you open that door we could have a mini trial on the
2 issue. Certainly the Court's concern was, at the very
3 least, the defense would then question whether any
4 witnesses had some bias since Attorney Groner was one of
5 the lawyers who represented the opposition to Mr. James
6 in that Appellate Division landlord tenant dispute
7 matter. The Court is concerned that merely going into
8 bias would bring up the underlying case that the Court
9 certainly didn't want to get into, under 403, because,
10 of course, it could confuse the issues, waste time,
11 create undue delay.

12 I made that clear in the morning and then I came in
13 here and on the record I thought I made it clear as
14 well. And thereafter the government called Mr. Groner,
15 whose sole testimony, as I understand, I think we had a
16 sidebar about that, was to get into specifically the
17 \$18,000 transaction. The only thing that the \$18,000
18 related to was an appeal bond of the Appellate Division
19 case that I heard, that I said I didn't want to get
20 into. And I looked at the end of the transcript on that
21 and I said, "we're not going there." And then Mr.
22 Groner was excused.

23 But then after that the government then called Miss
24 Chumney. And the Court always expects the best from
25 every party and expects that every party understands the

1 letter and spirit of the court's ruling. But the sole
2 reason for calling Miss Chumney, as I understood, and we
3 discovered at sidebar, was so she could testify about
4 the very \$18,000 appeal bond payment that I had said
5 we're not going to get into because it could raise those
6 403 issues. I believe she had some very very brief
7 introductory testimony but the Court arrested that.

8 But to the extent there is an exposure to evidence,
9 is the misconduct issue one that has some weight given
10 the four or five instructions by the Court, don't go
11 there, don't touch on this issue in any way? Is that
12 something that should give rise to the relief that the
13 defendant seeks?

14 ATTORNEY SMITH: No, Your Honor.

15 THE COURT: Tell me why not.

16 ATTORNEY SMITH: Your Honor, we understood the
17 Court's ruling. We understood that the Court was
18 specifically concerned with the appellate issue and the
19 litigation --

20 THE COURT: The question would be, if the
21 United States was -- if it was so clear to the United
22 States government, why was Mr. Groner called and then
23 the sidebar and then Miss Chumney called?

24 ATTORNEY SMITH: I will explain, Your Honor. I
25 will explain. We, in good faith the United States

1 believed that we had sanitized Attorney Groner's
2 testimony only to speak of the debt that was attributed
3 to the past rent that stemmed some five-year period, not
4 that it was litigated or that there was a bond, or that
5 it was appealed.

6 THE COURT: You said rent, that's the
7 underlying case, correct?

8 ATTORNEY SMITH: The Victoria House landlord
9 tenant dispute.

10 THE COURT: Which was contested. It was a
11 landlord tenant dispute --

12 ATTORNEY SMITH: Yes, sir.

13 THE COURT: -- that this Court heard in its
14 reviewing appellate capacity that I said I didn't want a
15 mini trial on. And that was the sole issue that Mr.
16 Groner was called to testify about, correct?

17 ATTORNEY SMITH: Your Honor, again our only
18 good faith attempt was to address the debt and not the
19 litigation. And we believed in good faith --

20 THE COURT: I think I used the term in chambers
21 in the morning, I said, if you open that door then it
22 could allow Attorney Jupiter to drive a Mack truck
23 through it to impeach the person who you bring on that
24 issue. I would expect that since Mr. Groner was the
25 attorney in the underlying landlord tenant dispute, and

1 I didn't want to have a landlord tenant dispute in the
2 middle of a criminal trial, that I made it clear in
3 chambers don't open that door.

4 ATTORNEY SMITH: I understand, Your Honor.

5 THE COURT: So, I'm just trying to understand
6 what was it, how is it that you sanitized it if the only
7 issue he's going to talk about, as you just said, was
8 the \$18,000, I think you said rent payment?

9 ATTORNEY SMITH: Yes. Your Honor, we, I think
10 the Court's focus should be that nothing done or
11 attempted by the United States was in bad faith. We
12 wholeheartedly believed that we had, in fact, sanitized
13 what would have been very limited testimony from
14 Attorney Groner that would have established that the
15 monies that we were alleging was embezzled by the
16 defendant was used to pay for an unlawful purpose. And
17 so, we will concede --

18 THE COURT: I can appreciate that. I
19 understand that with respect to Mr. Groner. But tell me
20 what was the thinking when Miss Chumney was called after
21 I reiterated again at sidebar, and I checked the
22 language, I said, "we're not going there."

23 ATTORNEY SMITH: Your Honor, that was a
24 mistake. That was a mistake and it was corrected
25 immediately. And we will own that mistake. But again,

1 Judge, the issue for the Court is to decide whether or
2 not the misconduct is one that would require a sanction
3 that is the most severe of sanctions that is available
4 to the Court. And I pray that Your Honor is not
5 convinced that those actions are such that rise to that
6 level because again, Your Honor, there has been no
7 prejudice. The defendant has not been unduly prejudiced
8 by any act of the government, nor was the jury exposed
9 to any evidence that was improper. And for those
10 reasons we believe that the Court's gatekeeping function
11 was a complete success in this effort, and that the
12 government owns what we did wrong. But, Your Honor, we
13 will also argue that at no way did it amount to any
14 misconduct that would be fitting for such a severe
15 sanction as a mistrial.

16 THE COURT: All right. Thank you, Attorney
17 Smith. I'll give you the last word since it's your
18 petition, Attorney Jupiter.

19 ATTORNEY JUPITER: I don't think the government
20 can rely on good faith when Miss Chumney was put on the
21 stand. Before they even asked a question, the
22 government attorney --

23 THE COURT: Well, I think your sister just said
24 she concedes that a mistake was made. Why - I mean, is
25 there any harm to the extent that there is a

1 demonstration of prejudice?

2 ATTORNEY JUPITER: Yes, Your Honor. I think
3 that for a jury to see witnesses being brought in and
4 then counsel, government counsel objects to the
5 witness -- I mean, of course, you can't help all of
6 that. But when you have one witness brought in, you
7 know, after a conference, you have sidebar, that witness
8 comes in again after lunch and is told no questions, the
9 jury says, well what's going on? He was just here.
10 They didn't ask any questions. Then another witness
11 comes in and the government says, oh, can we approach?
12 Because they know they are wrong. They know this is in
13 violation of the Court's ruling. And have the witness
14 up there, paraded up there in front of the jury, asked
15 for sidebar and the Court says no. And rather than say
16 okay, we have no -- at least then it still hurts to have
17 them bring the witness in, not ask a question, and kind
18 of look around and say, oh, yeah, sorry, jury. We
19 wanted to give you all some information but, you know,
20 defense attorney and the Court did not let us do it, so
21 here is another witness. They have to get out of here
22 too. But at least at that point they could have done
23 that. Rather than doing that, not asking any questions,
24 after the Court said no at sidebar, they start
25 questioning the witness, and questioning them knowing

1 that they are wrong, looking around like, what should I
2 do? Well, you shouldn't question the witness. They do
3 question the witness. They let the witness talk. They
4 let the witness know, they let the jury know that this
5 witness is coming here with bank records, with
6 incriminating evidence of bank records that the Court is
7 not going to let the jury hear about. And that's
8 question after question. Then Counsel has to stand up
9 and say objection, can I get a sidebar. And the Court,
10 as his policy is, has made known, and as local rules
11 says, no, counsel, you can't. No, thank you. Like the
12 Court always does, like Ms. Smith always knows that the
13 Court always does, like I know that the Court always
14 does, like the two attorneys from Washington D.C. have
15 learned that the Court always does. And they continue
16 to question and continue to question and look around and
17 say I know I'm doing something wrong, but I'm going to
18 continue questioning. And finally, the Court said okay,
19 come to sidebar. You know you're wrong. You're wrong.
20 I told you not to do that. Go back, thank you, no
21 further questions of the witness. Another witness the
22 jury is not able to see what this evidence was that the
23 defense attorney and the Court didn't let me hear.

24 I think that that's prejudicial, Your Honor, and I
25 think it's misconduct. And I think there should be

1 mistrial.

2 THE COURT: All right. Well, I can appreciate
3 the defense's position. And it certainly troubles the
4 Court that it took multiple instructions from the Court
5 that just seem to be unheeded. And it is always
6 troubling to the Court where it seems that the attitude
7 might be arguably, I'll try to get this in at any cost
8 because it seems like it's playing a game, I can slip
9 one in. If I didn't get it in after the first
10 admonition, I'll try after the second, the third, the
11 fourth, and I'll keep trying even though I thought the
12 Court was extremely explicit.

13 Having said that, though, with respect to the two
14 categories in which I think this breaks down, one would
15 be evidence presented to the jury, I think the Court in
16 every instance arrested any testimony before it got to
17 that point. Certainly with respect to Mr. Groner, the
18 Court arrested that testimony before it could evolve.
19 With respect to Miss Chumney, the Court certainly gave
20 the government the benefit of the doubt that it
21 certainly, after four warnings by that time, would not
22 go there, and gave the benefit of the doubt to the
23 government only to find that that is precisely where
24 they were going, which was validated when I had to call
25 them to sidebar.

1 In any event, with respect to the evidence prong I
2 don't believe that any evidence came out that would
3 unduly prejudice the defense in this case.

4 So, that leaves the second issue that I believe is
5 the second category, and that would be whether there was
6 some misconduct that rose to the level that warrants a
7 mistrial. And I can appreciate the defense's position
8 that there are certain optics in a trial and, while it's
9 not ideal, the Court doesn't find that it raises to the
10 level of prejudice that would warrant the relief
11 petitioned for. Again, the touchstone for most
12 inquiries by the Court, including one for mistrial is,
13 is there some prejudice, some -- not that there isn't
14 prejudice in a trial. There are adverse sides. The
15 question is, is there some undue prejudice, something
16 that's unfair that warrants the relief? And the Court
17 doesn't find that it rises to that level.

18 However, the Court was a bit concerned that it took
19 so many instructions from the Court to get a message
20 through that had been made clear from the very beginning
21 of the trial, by the afternoon of the first day, in the
22 morning before we began the second day, again with Mr.
23 Groner and again Ms. Chumney. That's troubling. The
24 Court certainly expects better from officers of the
25 court.

1 So, the petition is denied. And I believe that
2 concludes the housekeeping matters, right? Thank you,
3 Counsel.

4 **[Recess.]**

5 **[Back on the record.]**

6 THE CLERK: District Court now in session.
7 Please be seated.

8 THE COURT: Good afternoon, Counsel. Good
9 afternoon, Members of the Jury.

10 The JURORS: Good afternoon.

11 THE COURT: I know you've been working hard. I
12 understand you have reached a verdict. Let me ask the
13 foreperson to hand up the verdict, please.

14 **[The verdict forms were tendered to the Court for**
15 **his inspection.]**

16 Will the defendant please rise. Madam Foreperson,
17 if you could stand up and read the verdict form as it is
18 written.

19 THE FOREPERSON: As to Count One, Wire Fraud,
20 on or about October 19, 2010, as charged in the
21 Indictment, We find the defendant, Wayne James, guilty.

22 As to Count Two, Wire Fraud, on or about October
23 22, 2010, as charged in the Indictment, We find the
24 defendant, Wayne James, guilty.

25 As to Count Three, theft concerning the program

1 receiving federal funds, We find the defendant, Wayne
2 James, guilty.

3 THE COURT: Thank you, Madam Foreperson. The
4 defendant can be seated. Members of the Jury, let me --

5 ATTORNEY JUPITER: Request polling, Your Honor.

6 THE COURT: All right. Ms. Brann.

7 THE CLERK: Jurors, you have heard the
8 foreperson announce the unanimous jury verdict. I will
9 now ask you individually is this your independent
10 verdict. As I call your seat number, please stand.
11 Seat 1, is this your independent verdict?

12 SEAT NUMBER 1: Yes, it is.

13 THE CLERK: Seat 2, is this your independent
14 verdict?

15 SEAT NUMBER 2: Yes, it is.

16 THE CLERK: Seat 3, is this your independent
17 verdict?

18 SEAT NUMBER 3: Yes, it is.

19 THE CLERK: Seat 4, is this your independent
20 verdict?

21 SEAT NUMBER 4: Yes, it is.

22 THE CLERK: Seat 5, is this your independent
23 verdict?

24 SEAT NUMBER 5: Yes, it is.

25 THE CLERK: Seat 6, is this your independent

1 verdict?

2 SEAT NUMBER 6: Yes, it is.

3 THE CLERK: Seat 7, is this your independent
4 verdict?

5 SEAT NUMBER 7: Yes, it is.

6 THE CLERK: Seat 8, is this your independent
7 verdict?

8 SEAT NUMBER 8: [No response.]

9 THE CLERK: Seat 8, is this your independent
10 verdict?

11 SEAT NUMBER 8: [Mumbled.]

12 THE CLERK: Seat 9, is this your independent
13 verdict.

14 THE COURT: Hold on. Wait. Repeat the
15 question to seat 8.

16 THE CLERK: Seat 8, is this your independent
17 verdict?

18 SEAT NUMBER 8: Yes, I do.

19 THE COURT: Go ahead.

20 THE CLERK: Seat 9, is this your independent
21 verdict?

22 SEAT NUMBER 9: Yes.

23 THE CLERK: Seat 10, is this your independent
24 verdict?

25 SEAT NUMBER 10: Yes, I do.

1 THE CLERK: Seat 11, is this your independent
2 verdict?

3 SEAT NUMBER 11: Yes, I do.

4 THE CLERK: Seat 12, is this your independent
5 verdict?

6 SEAT NUMBER 12: Yes, it is.

7 THE CLERK: Judge, the jury has been polled.

8 THE COURT: All right. Thank you, Ms. Brann.
9 Just so the record is clear, I have a question of a few
10 jurors. This question is a yes or no question. You
11 just need to answer yes or no.

12 Juror in seat 8, is this your independent verdict,
13 yes or no. Stand up.

14 SEAT NUMBER 8: Sorry?

15 THE COURT: So, is this your independent
16 verdict, yes or no. You can stand up.

17 SEAT NUMBER 8: [No response.]

18 THE COURT: My question is a yes or no
19 question. Is this your independent verdict, yes or no.

20 SEAT NUMBER 8: Yes.

21 THE COURT: Okay. You can have a seat. Juror
22 in seat 10, is this your independent verdict, yes or no.

23 SEAT NUMBER 10: Yes.

24 THE COURT: Juror in seat 11, is this your
25 independent verdict, yes or no?

1 SEAT NUMBER: Yes.

2 THE COURT: Okay, thank you.

3 All right. Members of the Jury, let me thank you
4 for your service. I know it is never easy serving as a
5 juror. We call on you for your time, your patience,
6 your cooperation, and you have given us that and so much
7 more. And for that I know that the government is
8 appreciative, and I know that the defense is
9 appreciative, and the Court, of course, is appreciative,
10 as is your country and your community.

11 Now, I know you've sat on this trial, but let
12 me remind you that your service is not yet over as a
13 juror for this court. It will be soon. But if you
14 receive a call please answer it, as your service is
15 still needed. All right, with that let me wish you a
16 pleasant day and thank you very much.

17 THE CLERK: All rise.

18 ATTORNEY JUPITER: Your Honor, I have a motion
19 before the jury is excused.

20 THE COURT: They are not excused yet. I'm just
21 going to have them retire to the deliberation room for
22 the moment.

23 **[The jurors leave the courtroom.]**

24 Be seated. Yes, Attorney Jupiter.

25 ATTORNEY JUPITER: Your Honor, my motion

1 preliminarily is for Juror Number 8 to be questioned by
2 the Court to ascertain whether or not she understands
3 English. I note for the record that she answered the
4 question initially, as to whether or not this was her
5 independent verdict, she answered something that I could
6 not make out; the Court was able to make it out. She
7 was asked a few times then eventually she said, "Yes, I
8 do." I do note, obviously, that after she said yes, I
9 do, the remaining jurors said "yes, I do." And I don't
10 think any of them had trouble understanding. However,
11 after the Court asked her again, yes or no, she turned
12 to other jurors to seek guidance. It seems to me that
13 she was seeking guidance on what was the Court asking
14 her. I don't know whether or not that's because she
15 couldn't hear. At this time I don't think the record is
16 clear, but I do think that the Court should ask some
17 questions to ascertain whether or not she can understand
18 English.

19 THE COURT: All right. Just so the record is
20 clear, the Court thanked the jurors. But given the
21 petition that was raised I specifically said on the
22 record that the jury is not yet excused, just returning
23 to deliberation room so we could deal with that. I say
24 that just so it's clear to the extent there is any
25 further work that needs to be done they are not excused.

1 So, let me hear from the government.

2 ATTORNEY VAUGHN: Your Honor, the government
3 doesn't believe there is any reason to further question
4 Juror Number 8. She followed the instruction once the
5 Court again asked her to state her answer in a yes or no
6 form. She answered with one word, yes, indicating she
7 clearly understood what the Court was asking. Her
8 initial answer was mumbled, and she eventually did say
9 yes as well there. She has clearly followed the Court's
10 instructions. There is no need to further question her.

11 THE COURT: But the government, it seems to me
12 that you are missing some of the things that your
13 brother pointed out. She did hesitate. Did you observe
14 that, yes or no.

15 ATTORNEY VAUGHN: I don't think she -- I
16 observed it. But my understanding is she didn't seem
17 like she realized she was Juror Number 8, but.

18 THE COURT: When she stood up, did you observe
19 her turn to someone else?

20 ATTORNEY VAUGHN: I did.

21 THE COURT: Okay. Should I have pause because
22 of that?

23 ATTORNEY VAUGHN: No, because Your Honor
24 inquired again a second time, and she stood up and
25 answered in the affirmative as was requested.

1 THE COURT: Yes. But everything that preceded
2 that, though, should there be any pause at all because
3 of that? She said, "Yes, I do" when the question called
4 for a yes or no. Should I be concerned?

5 ATTORNEY VAUGHN: I don't think so, Your Honor,
6 because when Your Honor asked her again a second time
7 during further questioning, and asked for just a yes or
8 no answer, she did provide a single word answer, yes or
9 no.

10 THE COURT: All right. I have some concern
11 because I observed precisely what the defense spoke of.
12 That's the only reason that I jumped in to defray. The
13 Court normally of its own doesn't ask the question. The
14 question was asked because the first response suggested
15 there may have been some, either some problem giving
16 some clear audible indicator as to where she stood.
17 That doesn't mean that her answer wouldn't have been
18 yes. I said hold on, go back, because it wasn't clear
19 to me. And as I looked on the record, it's not even
20 really clear on the record what she said. And that was
21 after the question was posed to the juror in seat number
22 9. I'll check the transcript with the reporter in a
23 moment to see precisely what happened. After the first
24 question was asked, it went on to the ninth juror
25 without a clear record of what the 8th juror said. When

1 it was posed again, she seemed a little unclear and then
2 she turned to someone who mumbled something. I'm not
3 even sure what Juror Number 9 said to Juror Number 8 but
4 there was some communication of some kind and then the
5 answer "Yes, I do", which seems unusual. At least two
6 other jurors followed, Juror Number 10 and Juror Number
7 11, and that's why I asked the question of them.

8 Let me ask the government, to the extent there is
9 some concern, since the only question would be one of
10 whether there is unanimity here, what is the relief at
11 this stage? Or what are the possible options?

12 ATTORNEY VAUGHN: The question to be posed to
13 her again. But it seems that she has answered in the
14 affirmative upon further questioning the second time the
15 Court asked her.

16 THE COURT: All right. So, are you -- so there
17 is no other option? Is that what you are saying, just
18 ask her again?

19 ATTORNEY VAUGHN: It was the government's
20 impression that she answered affirmatively to the
21 question in the first place.

22 THE COURT: I guess my question is, assuming
23 for the sake of argument that there is some concern that
24 ought to be had here, is there some option that would
25 address that concern, some other option other than

1 asking the same question again?

2 ATTORNEY VAUGHN: I'm not sure, Your Honor.

3 THE COURT: Your brother suggests that there
4 might be a language problem which could certainly bring
5 into question other things. Would a poll be something
6 that the government might suggest?

7 ATTORNEY VAUGHN: A poll of the entire jury
8 again?

9 THE COURT: All right. Let me ask the defense
10 what suggestions the defense have. Now, in this Court
11 we've had issues where we've had juror issues and the
12 question of unanimity has come up and the Court on
13 multiple occasions, well, multiple occasions in this
14 division as well as in St. Croix, where there have been
15 some question as to any irregularity, has conducted a
16 poll to make sure that unanimity was there and to
17 obviate the need for any issue arising post-verdict.

18 Do you believe a poll is appropriate here or some
19 voir dire of the juror by the Court?

20 ATTORNEY JUPITER: Well, Your Honor, my only
21 concern was a language barrier. I'm starting to think
22 now that maybe there is some other type of barrier. I
23 don't know. So, at this point --

24 THE COURT: One second.

25 **[Off the record.]**

1 **[Back on the record.]**

2 Go ahead, Attorney Jupiter.

3 ATTORNEY JUPITER: Well, Your Honor, I think
4 there is sufficient information for the Court to grant a
5 mistrial at this point. First of all, Mr. James has not
6 only a right to a unanimous verdict, he also has a right
7 to 12 jurors to deliberate and to deliberate
8 independently. I think what the Court has evidenced is
9 one juror who seemed to be guided on a simple question
10 by the jurors. There is enough information that the
11 Court has that whatever barrier this juror has, she does
12 not -- I don't think the Court can be satisfied that
13 she, number 1, has the ability to have an independent
14 verdict; number two, that she has the ability to
15 deliberate independently; number 3, in terms of the voir
16 dire process, I don't think that this juror would have
17 been able to understand all of the questions that the
18 Court gave her during voir dire.

19 So, for those reasons we don't think -- you know,
20 the other option, the question that was posed to the
21 government, the other option is mistrial. I have no
22 problem if the Court wants to grant a mistrial without
23 further questioning the jury. So, at this point that's
24 what we're asking.

25 THE COURT: Attorney Jupiter, short of a

1 mistrial, aren't there other options, though? That is,
2 couldn't the Court undertake a voir dire of that juror
3 to find out, one, precisely whether the juror was
4 capable of understanding the question posed and; two,
5 that that was to the subsequent, the juror did
6 understand the question, that her answer was in fact an
7 affirmative answer? I checked with the court reporter,
8 and the record should reflect that there is nothing for
9 the first time around because the juror, although the
10 question was posed to the juror in seat number 9, there
11 is no answer recorded for the juror in seat number 8
12 because the mumbling wasn't a yes, it wasn't yes, I do.
13 There was virtually nothing that was clear, at least to
14 the Court, and significantly there is nothing, no
15 official record because the Court reporter didn't hear
16 anything except sound, not words.

17 But it seems to me that some voir dire undertaken
18 by the Court might alleviate some of the concerns that
19 you have, and certainly a remedy that is short of the
20 mistrial.

21 And also, the reason I made it clear on the record
22 that the Court was not excusing the jury was it seems to
23 me if there is a question with respect to unanimity, and
24 there is a question when you drill down as to a single
25 juror, wouldn't the remedy be to have an alternate slip

1 into that spot, have the jurors then restart
2 deliberations and then ensure that you have a unanimous
3 jury?

4 ATTORNEY JUPITER: Not at this point, Your
5 Honor, not with this juror, these jurors, the 12.

6 THE COURT: Remember I said the jury is not
7 discharged. If it was discharged, I can appreciate
8 there are many limitations. If they are not discharged,
9 and I said on the record they are not excused, wouldn't
10 having an alternate come into the deliberating room and
11 excusing that juror, if indeed there is a problem at all
12 with that juror and the capacity to understand English
13 or understand the Court's questions, wouldn't that be an
14 option?

15 ATTORNEY JUPITER: Absolutely not. Eleven
16 people have signed the verdict form and announced their
17 verdicts.

18 THE COURT: Well, Attorney Jupiter, I can
19 assure you in this court I've had at least one juror
20 that comes very clearly to mind who was sitting, I
21 think, in seat 11 some years ago, whose answer was yes
22 and no. And the remedy that the Court undertook in that
23 case was to send them back to get a unanimous verdict.
24 Now some things changed a bit, but the verdict came
25 through. And I think, if I'm not mistaken, I think that

1 there was no problem on the review with that process.
2 Why, to the extent that there is some question as to
3 unanimity, couldn't we undertake that sort of remedy?

4 ATTORNEY JUPITER: Well, Your Honor --

5 THE COURT: Not assuming that mistrial isn't
6 the option that the Court takes, short of that isn't
7 that one of the options?

8 ATTORNEY JUPITER: I don't think it is an
9 option, Your Honor. And I'm not familiar with the Court
10 -- obviously, the Court has had experience with this and
11 seen the 3rd Circuit opinion on it. So, I have not.
12 But I don't think it would be fair to have this jury --

13 THE COURT: How to be fair. I don't know if it
14 came up as a single issue that made it through the
15 Circuit, but what happened is that conviction was
16 affirmed. I don't think that was an issue.

17 ATTORNEY JUPITER: Well, I don't -- to be
18 honest with you, Your Honor, I don't know a 3rd Circuit
19 case that has dealt with this specific issue after a
20 jury, after a jury has already, although they have not
21 been discharged, they have already announced their
22 verdicts; they have signed the verdict forms; they stood
23 up; they've been polled. And to say then you can start
24 them over with another juror come in, and all of them
25 already said, okay, we thought we were going home now we

1 have this other juror to start all over with. I don't
2 think we can start all over again. If I have to sit
3 up -- they feel like --

4 The Court even has thanked them for doing a good
5 job. And as far as they know they are ready to go home.
6 And they have already made up their minds. I don't see
7 how. One, not at this stage, replacing them, replacing
8 the juror and telling them to start all over and listen
9 to this juror. I think they would be back there saying,
10 hey, we've all made up our minds. Is there anything you
11 want to say? I don't think that that is the same thing
12 as 12 people starting from scratch.

13 THE COURT: Let me ask you then your position
14 on an inquiry of that juror, just to assess whether
15 there is any issue with language?

16 ATTORNEY JUPITER: That was my initial request,
17 Your Honor. And I would say that is entirely
18 appropriate. I don't know that it's -- I think that the
19 Court should do it.

20 ATTORNEY CASS: May I be heard on this, Your
21 Honor.

22 THE COURT: Yes. Are you done, Attorney
23 Jupiter?

24 ATTORNEY JUPITER: I am, Your Honor.

25 THE COURT: So, you are sticking with your

1 first position then that the Court can undertake an
2 inquiry?

3 ATTORNEY JUPITER: I'm sticking with my first
4 position that --

5 THE COURT: Your first position, I thought, was
6 something along the lines that there is a question with
7 respect to capacity to understand English. And I
8 thought that the followup to that would be that the
9 Court would then inquire?

10 ATTORNEY JUPITER: That was my first request.
11 And after I thought about it for awhile, I thought there
12 may be other issues as well in terms of if it's not a
13 language barrier to try, for the Court to try to
14 ascertain what was the understanding, that it not be
15 with yes or no questions but that the juror show that
16 she can speak and comprehend the English language.

17 THE COURT: Okay. All right, thank you.

18 ATTORNEY CASS: Your Honor, just so the record
19 the clear, mentioning language issues and now other
20 barriers, I think it's very clear she's seated in the
21 back left-hand portion of the jury box. That's the
22 problem. She didn't know her number, Your Honor. Juror
23 8, she didn't know she was Number 8. When she realized
24 that she stood, she responded twice in English to the
25 question. I think there is really no reason to inquire

1 as to her language. Twice on the record she responded
2 in English.

3 THE COURT: Are you saying the first time she
4 responded?

5 ATTORNEY CASS: Oh, Your Honor, she didn't know
6 she was Juror 8, so then she stood up and she responded.
7 And then we asked her again and she responded again. I
8 don't know what else we're inquiring about. They were
9 asked to her and she responded. There is no reason for
10 a mistrial. There is no reason to question her
11 language.

12 THE COURT: Did you observe that she stood up
13 when Ms. Brann called her number at some point?

14 ATTORNEY CASS: Yes, Your Honor.

15 THE COURT: Did you understand her to answer
16 the first time around?

17 ATTORNEY CASS: She answered, yes.

18 THE COURT: All right, so you heard an answer
19 the first time?

20 ATTORNEY CASS: Yes, she answered, Your Honor.

21 THE COURT: You heard an answer the first time
22 she spoke, she spoke?

23 ATTORNEY CASS: I think she didn't realize what
24 --

25 THE COURT: I'm beyond that. My question is

1 just a yes or no. It's not a trick question.

2 ATTORNEY CASS: Yes, Your Honor.

3 THE COURT: You heard an answer the first time?

4 ATTORNEY CASS: Yes.

5 THE COURT: All right. I didn't hear it; the
6 court reporter didn't hear it. That's why I went back.
7 But, all right. So, your position is that the answer
8 was -- what was the answer that you heard the first
9 time? Before I said hold on, go back, what answer did
10 you hear?

11 ATTORNEY CASS: She said yes.

12 THE COURT: Just yes?

13 ATTORNEY CASS: It was very soft spoken, yes.
14 She's closer to our table, Your Honor, so I that's
15 probably why we heard and no one else did, but.

16 THE COURT: All right. So, does the United
17 States have any concern that the record reflects no
18 answer?

19 ATTORNEY CASS: Well, the second time around it
20 was asked --

21 THE COURT: My question, just a yes or no.
22 You're going to get --

23 ATTORNEY CASS: I have no concern, Your Honor,
24 about this.

25 THE COURT: Okay. All right. I think with an

1 abundance of caution what the Court will do is undertake
2 an inquiry to assess whether there is some concern with
3 understanding the language. To the extent there is some
4 concern with the language, which is something we've had
5 in, I think, trials as recently as the past, within the
6 past 16 months or so. I think probably within the past
7 16 months or so, we've simply put an alternate in place.
8 Now, is there -- should the Court have any concern,
9 should we get to that point, that is, where there is a
10 language, a capacity to understand language that
11 troubles the Court, are there any options that the Court
12 has at that point?

13 ATTORNEY CASS: What you just suggested, Your
14 Honor, putting in an alternate and redeliberating. I
15 don't think that's necessary, but that would be the
16 option.

17 THE COURT: All right. I appreciate your
18 position. I'm not persuaded by it. I think what the
19 Court is going to do is make an inquiry, of course,
20 counsel will be there, and then the Court will make a
21 determination as to whether there is a language issue
22 with respect to the juror in seat 8.

23 ATTORNEY CASS: Yes, Your Honor.

24 THE COURT: All right. Ms. Brann will be in
25 touch with you shortly. Thank you.

1 THE CLERK: All rise. Remain standing while His
2 Honor leaves the courtroom.

3 **[Off the record.]**

4 **[Back on the record in chambers.]**

5 THE COURT: Good afternoon.

6 JUROR NUMBER 8: Good afternoon.

7 THE COURT: Tell us your juror number, please.

8 JUROR NUMBER 8: Lucia Feliciano Polanco-Colon.

9 THE COURT: Tell us your juror number.

10 JUROR NUMBER 8: 103.

11 THE COURT: We were just in the court and you
12 were asked some questions. The first time you were
13 asked the question, what was your answer?

14 JUROR NUMBER 8: The first one yes, I do. I
15 answer you.

16 THE COURT: And then what was your second
17 answer?

18 JUROR NUMBER 8: The second, yes.

19 THE COURT: And then what was your third
20 answer?

21 JUROR NUMBER 8: Yes.

22 THE COURT: Okay. Now, did you turn to anyone
23 when you were in the jury box?

24 JUROR NUMBER 8: No.

25 THE COURT: Okay. Did you ask any of the

1 jurors next to you any questions?

2 JUROR NUMBER 8: No.

3 THE COURT: Okay. Do you understand English?

4 JUROR NUMBER 8: Yes, I do. Okay, I cannot
5 watch too much English for I know I understand
6 everything.

7 THE COURT: Okay. So, you didn't turn to --
8 did any of the jurors tell you anything when you were in
9 the jury box?

10 JUROR NUMBER 8: No. Just I listen and I say.

11 THE COURT: Okay. Did you speak any Spanish
12 when you were in the jury box?

13 JUROR NUMBER 8: No. No. The sound, I speak
14 in Spanish for everybody speak English.

15 THE COURT: I didn't understand that.

16 Juror Number: No. I say it had two person
17 Spanish in there, right? You know, everybody know
18 English, so I speak to the English.

19 THE COURT: You said there were two people
20 speaking Spanish?

21 JUROR NUMBER 8: Yes, the two people Spanish,
22 two Puerto Ricans.

23 THE COURT: And did you -- when you stood up, I
24 saw you turn to one of the persons sitting next to you
25 when we were just in court.

1 JUROR NUMBER 8: No.

2 THE COURT: Okay, you didn't turn to anyone?

3 JUROR NUMBER 8: No.

4 THE COURT: Okay, just so we're clear, not that
5 you're in trouble, we need to make sure what happened.

6 JUROR NUMBER 8: Yes. It's okay. No problem.

7 THE COURT: So, you stood up. No one next to
8 you said anything?

9 JUROR NUMBER 8: No, nobody.

10 THE COURT: Did you say anything to anyone?

11 JUROR NUMBER 8: No.

12 THE COURT: Okay. Now, when the courtroom
13 deputy was calling the numbers, when she said juror in
14 seat number 7, or juror in seat number 8, tell us what
15 happened.

16 JUROR NUMBER 8: When she said juror in seat
17 number 8, juror, I confused. That's why when she, the
18 one to me, the one close to me, I number 8. So, she
19 number 7. I confused. I don't hear what the number you
20 call. That's why I stay seat. That's why I said sorry
21 because I know I stand up a time.

22 THE COURT: And then what happened at that
23 time?

24 JUROR NUMBER 8: No, nothing happened. Why?
25 Like you what?

1 THE COURT: Tell me what happened after you
2 heard --

3 JUROR NUMBER 8: I get nervous. I get nervous.
4 So, everybody go to the room.

5 THE COURT: Okay, I'm talking about in the
6 courtroom when you were just there, when the courtroom
7 deputy called the juror number.

8 JUROR NUMBER 8: Yes.

9 THE COURT: I want to know, tell me what
10 happened.

11 JUROR NUMBER 8: When you call the juror
12 number, number 8, right, I confuse. I thinking you say
13 number. I don't remember a number 8. That's why I stay
14 seat.

15 THE COURT: Okay. And then tell me what
16 happened after that.

17 JUROR NUMBER 8: What I told you?

18 THE COURT: Yes, tell me.

19 JUROR NUMBER 8: I said sorry. I say, I say
20 yes, I sorry because I know to stand up. That's why I
21 told you sorry.

22 THE COURT: And then what happened after that?

23 JUROR NUMBER 8: When you tell me, and you call
24 two number, two more number. You say tell me; I answer
25 you. You say --

1 THE COURT: Not me. I'm not talking about me.
2 I'm talking about my courtroom deputy, the lady over
3 here, Ms. Brann.

4 JUROR NUMBER 8: Uh-huh.

5 THE COURT: Tell me what happened when she was
6 calling the number. Not me, when she was calling the
7 number.

8 JUROR NUMBER 8: When she was calling the
9 number, I sit and I stand up. And that's the time I
10 told you sorry.

11 THE COURT: Okay. And then what happened after
12 that?

13 JUROR NUMBER 8: She ask -- I can't remember.

14 THE COURT: You don't remember what happened
15 after that?

16 JUROR NUMBER 8: [Indicating.]

17 THE COURT: The juror shook her head indicating
18 no. So, we're just trying to find out -- you're not in
19 trouble or anything. I just want to find out what
20 happened after this lady, my courtroom deputy, called
21 the juror number. I just want to have a very clear
22 record of what happened. So, as best as you can
23 remember.

24 JUROR NUMBER 8: When I say, "Yes, I do." Yes,
25 when she call my number. When I --

1 THE COURT: Yes. She called your number and
2 what number was that?

3 JUROR NUMBER 8: 103. No. No. The seat
4 number, seat number 8.

5 THE COURT: Okay. And then tell me what
6 happened after that.

7 JUROR NUMBER 8: Sorry, I can't remember.

8 THE COURT: Okay. All right, okay. Thank you
9 so much.

10 JUROR NUMBER 8: You're welcome. Sorry.

11 THE COURT: Okay. It's okay.

12 **[The Juror was excused.]**

13 The record should reflect that Attorney Jupiter
14 indicated his objection to the Court undertaking this
15 inquiry without his client present. He did that before
16 the juror was brought in here. And that, I believe, is
17 his current position; is that correct?

18 ATTORNEY JUPITER: Yes, Your Honor.

19 THE COURT: All right. Let me ask counsel
20 what, what the counsels' position with respect to Juror
21 in seat number 8; and seat number 9, having an inquiry
22 with that juror?

23 ATTORNEY VAUGHN: You mean seat 8?

24 THE COURT: I'm asking about seat number 9.
25 The reason the Court brings it up is because I observed

1 the juror in seat number 8 stand up and turned to seat
2 number 9. I'm not sure for what. But there appeared,
3 at least in my view, to be an exchange of something. I
4 don't think it was a long discussion. I don't know what
5 happened, if anything of significance happened.

6 ATTORNEY SMITH: I sat closest and the juror
7 seated in the seat told Juror 8 you have to stand.

8 THE COURT: That's what you heard?

9 ATTORNEY SMITH: That's what I heard.

10 THE COURT: Okay. When did you hear that?

11 ATTORNEY SMITH: Sorry?

12 THE COURT: At what stage did you hear that?

13 ATTORNEY SMITH: After sitting. She never
14 responded to Ms. Brann's inquiry.

15 THE COURT: When Ms. Brann asked the first
16 time?

17 ATTORNEY SMITH: Juror Number 8, she just sat.
18 And the lady next to her said you have to stand, and she
19 -- that's when she stood up. That was the dialogue I
20 heard from the two jurors. It is clear she didn't
21 understand the difference between her seat number and
22 juror number. And the juror said, you have to stand.
23 And then she stood up and said yes.

24 THE COURT: Okay. And that's what you heard
25 the first time around?

1 ATTORNEY SMITH: That's the only time there was
2 interaction between the two.

3 THE COURT: No. No. You heard yes?

4 ATTORNEY SMITH: The initial time?

5 THE COURT: Yes.

6 ATTORNEY SMITH: I didn't hear a response the
7 first time. It wasn't clear to me what she said the
8 first time, what she responded.

9 THE COURT: I know she uttered something. No
10 one heard the word. At least I didn't. I don't believe
11 the defense did.

12 ATTORNEY JUPITER: I didn't hear the word. But
13 I can say she was saying more than one word. So, that
14 alone.

15 ATTORNEY VAUGHN: She just said, stood up and
16 said sorry. And she said yes.

17 ATTORNEY JUPITER: It was more than two words.
18 She was mumbling something, as the Court said. I
19 couldn't make out what she was saying. But she wasn't
20 clearly just saying yes, or no; or sorry, yes. She said
21 a few things.

22 ATTORNEY SMITH: And she just explained.

23 THE COURT: This is not an argument. We're on
24 the record here now. I have enough concern that I'm
25 troubled. One, it's a significant moment, and I think

1 that it was her, to me that juror struggles with
2 English. Two, it's clear to me that the sequence of
3 events she has, it's not clear to her. I think she was
4 responding to an inquiry that I made. And what I asked
5 her when I had the courtroom deputy, I pointed out Ms.
6 Brann, it seems to me at one point she got as far as the
7 seat number and the issue about whether she should stand
8 up; and she remembers nothing after that. That gives me
9 some concern. What also gives me some concern is that I
10 have listened to every word uttered by every juror for
11 every case, and I think I hear pretty well, I didn't
12 hear anything like a yes, according to what Attorney
13 Cass said. In fact, it was where I think Attorney Smith
14 is, which is there was some utterance that wasn't clear.
15 Attorney Smith was the closest one to the jury box.
16 There may have been more than one word uttered, but I'm
17 not sure. Quite frankly, like what Attorney Jupiter
18 said, I do know that there was some exchange between the
19 juror in seat 9 and the juror in seat 8. Attorney
20 Smith, again the closest one, said that she heard juror
21 in number 9 say you have to stand or something to that
22 effect. So, there was some exchange.

23 What troubles the Court is juror in seat number 8
24 said that nothing was said. That's troubling to the
25 Court. She doesn't remember. According to her own

1 testimony when she recognizes Ms. Brann and said she
2 can't remember what happened after the seat number, she
3 didn't disclose to the Court any words uttered between
4 any juror sitting next to her, and she had some issue
5 with English. Now, my concern is just with her ability
6 to recall, gives me some question of whether there is
7 sufficient basis to have her remain on the jury to the
8 extent there is any further work to be done. I will
9 note she did say, "Yes, I do." But that was the second
10 pass. And she did say yes. But that was the third pass
11 when I asked the question say yes or no. And at this
12 point the Court's only question is, should the Court
13 undertake an inquiry of juror in seat number 9 to
14 ascertain whether or not there as some exchange? We
15 have the juror in seat number 8 who said there was none.

16 What's the government position? Who is speaking
17 for the government? Attorney Smith.

18 ATTORNEY CASS: Well, Your Honor, I think she
19 clearly answered. I don't know what the benefit of
20 acquiring from Juror 9 would be as to that.

21 THE COURT: You believe she, Juror 8 answered
22 what?

23 ATTORNEY CASS: I believe she clearly told you
24 what happened, she didn't understand what happened.
25 Next she said sorry and she repeated it. So, it's

1 obviously --

2 THE COURT: She was asked the question if
3 anyone, if she said anything to anyone, anyone said
4 anything to her. What did you hear her just say?

5 ATTORNEY CASS: She said no. She said I don't
6 remember. I don't remember.

7 THE COURT: And your sister just said she heard
8 the juror in seat number 9 say something. Do you think
9 we should do something with seat 9, or should I have any
10 pause? Because the juror in seat 8 said there was no
11 utterance and your sister says she heard an utterance.
12 I observed an utterance.

13 ATTORNEY CASS: We can inquire of Juror 9 just
14 to alleviate that concern.

15 THE COURT: Attorney Jupiter?

16 ATTORNEY JUPITER: I don't see why there needs
17 to be any inquiry at this point. Not only did she say I
18 didn't see any, you asked did you turn to her? She said
19 I didn't turn to her. So, even if the Court didn't have
20 any concerns, the Court can't be confident in this, that
21 particular juror 's answer. I think at this point the
22 Court -- I would move for a mistrial, Your Honor. I
23 don't think there is any need to go any further because
24 even if juror -- I'm certain Juror 9 will probably say,
25 say what happened. But I think it's very clear from all

1 of the answers, information you have right now there is
2 no need to do anything further other than to grant a
3 mistrial.

4 THE COURT: All right. Well, my inclination is
5 to inquire of Juror Number 9 just to close the loop on
6 this one. But if the defense is to find there is no
7 need to further, you believe there is sufficient --
8 there is a question of whether the Court should have any
9 confidence with the juror. I'm referring to Juror
10 Number 8, correct?

11 ATTORNEY JUPITER: Yes, Your Honor.

12 THE COURT: Now, to the extent there is some
13 issue with her candor to the Court that -- significantly
14 the question about language becomes an issue now because
15 I'm not sure if she understood clearly, from what she
16 understood, if that's accurate. I'm not sure if she is
17 truthful as she ought to be.

18 What's the defense's position on having an
19 alternate in her place?

20 ATTORNEY JUPITER: My position is the same,
21 Your Honor. I don't see how that could be fair to Mr.
22 James to have, to have a jury that -- now that I
23 recollect a case, another -- I don't know if the Court
24 was referring to a case that the Court had with me,
25 where we had a juror who found out --

1 THE COURT: We don't need to be in here for
2 this discussion. Why don't we go into open court.

3 **[Off the record.]**

4 **[Back on the record.]**

5 Attorney Jupiter, you want to be heard --

6 ATTORNEY JUPITER: Yes, Your Honor. We
7 continue in terms of our motion for mistrial. I think
8 the record has been clear that this juror has a number
9 of issues, not only with regard to language. But upon
10 the Court's inquiry I think an issue in terms of the
11 candor to the Court's questions proposed in chambers.
12 Your Honor, I think the issue at this point -- the Court
13 has raised an issue as to whether or not Juror 9 should
14 be questioned. I don't think there is any need to do
15 that at this point.

16 The Court has also raised another proposed remedy
17 which was to have the jurors begin deliberation all over
18 with another juror coming in. That is certainly -- I
19 don't think that's a remedy to the issue of having a 12
20 person juror start deliberations deliberating with an
21 open mind. These 12 people have signed a verdict form.
22 I don't think at this point that they can be, there
23 would be -- that remedy would be sufficient.

24 THE COURT: But, Attorney Jupiter, isn't that
25 the purpose in having the inquiry by the Court before I

1 discharge the jury, to ensure unanimity and, that is,
2 evidence on the record? And if it isn't the alternative
3 for the Court to do what is necessary to the extent that
4 option is preserved to see if there could be a unanimous
5 verdict? You know, I mentioned the case, I think it was
6 United States v. Mark. If I'm not mistaken Attorney
7 Smith may have been involved in that case, or at least
8 five cases with Mr. Mark, all of which involved multiple
9 defendants, extensive issues. And my sense, one of the
10 jurors in -- that case was heavily litigated and
11 appealed at every step of the way, including pre-trial
12 and post-trial. I thought that there was an issue with
13 the juror. And I think after a signed verdict form, an
14 announcement of the verdict, only after polling that
15 issue became evident when the juror said yes and no.
16 So, I can appreciate your position. I'm not so sure
17 that the Court's options are so limited.

18 But as I indicated in chambers, the Court examined
19 the juror in seat number 8 and several things were
20 evident. One, the juror does have problems with the
21 English language. The transcript alone indicates as
22 much. Two, the juror could not recall certain things
23 significantly. She recalled, I believe although it is
24 unclear, inquiries made by the Court of her but not of
25 the courtroom deputy. In fact, when she was asked to

1 recall specifically what happened, the Court pointed out
2 Ms. Brann and said this lady, what happened? She
3 recalls having the number being called, the seat number
4 being called. Not being clear what seat number she was
5 in standing up, and then she said she can't remember
6 anything. And I asked on several occasions, she didn't
7 remember. So, my sense is that because that juror has
8 an issue with recollection, understanding of the English
9 language, and significantly her candor to the Court is
10 one development that is clear.

11 The closest person to the jury box is Attorney
12 Smith. Attorney Smith heard exchanges between the juror
13 in seat number 9 and seat number 8. And she disclosed,
14 not withstanding other protestation, notwithstanding
15 significantly the utterance of the juror in seat 8, who
16 said there was no exchange. Not only did Attorney Smith
17 hear it, but she recounted for the Court precisely what
18 it was. Significantly also, Attorney Smith also
19 indicated that she did not hear anything clearly from
20 the juror on the first pass, which certainly was what
21 the Court heard, nothing clearly; what the court
22 reporter heard, nothing clearly on the first pass, which
23 certainly made the Court wonder whether there was some
24 capacity to understand and that's why the Court said,
25 "Hold on." Go back. And then we had that unique

1 answer, "Yes, I do."

2 So, my sense is to avoid any issues that -- to the
3 extent the jury has not been excused, the only question
4 is, does this deem a discharge? If not, then it seems
5 to me then we'll be limited. I'm not sure there has
6 been a discharge. And that's why I made it clear before
7 they left the courtroom that they are not excused. We
8 still have the alternates that are here. And my
9 inclination is to excuse the juror who was in seat
10 number 8 and have the jurors restart their
11 deliberations. And then it seems to me that would be
12 one way to ensure that you have a verdict that is
13 unimpeachable. But under these circumstances, I think
14 there is enough issues here that it shouldn't take three
15 questions to get a simple yes or no answer. And usually
16 there is no discussion between jurors when they give an
17 utterance to that polling. It's insignificant in the
18 Court's experience. Polling is something that jurors
19 recall with detail. It's something they dread. It is
20 something that they don't like to go through. And for
21 this juror to say I don't remember is certainly
22 troubling.

23 ATTORNEY JUPITER: Will the Court give
24 instructions to the jurors as a whole as to how --

25 THE COURT: Yes, the Court will have to. I

1 think we did this not so long ago. I can't remember
2 precisely when.

3 ATTORNEY SMITH: Your Honor, if I may.

4 THE COURT: I believe we had at least two
5 jurors in resent memory where we had language issues and
6 the Court simply made an instruction that the
7 deliberation had to begin a new, and they did that. I
8 think, Attorney Smith, you may have been involved in one
9 of those cases?

10 ATTORNEY SMITH: Yes. On April 2nd in the
11 matter of the United States v Jermaine Hall. And there
12 was a French citizen who spoke no English. And when we
13 were advised of that, the Court replaced him with an
14 alternate and the deliberations started a new. And we
15 were able to get a verdict after that.

16 THE COURT: I believe there was a case, maybe
17 the week before or the week after, where there was
18 someone who spoke Spanish and was unable to continue and
19 we simply replaced that person.

20 Really, the only issue the Court sees here, whether
21 there would be a, in fact, a discharge. I believe the
22 jurors have remained under the control of the court,
23 they were not allowed to leave the building. They are
24 still in our deliberation room.

25 So, under the circumstances, since I don't believe

1 there is any objection to -- I believe the defense has
2 an objection to relieving the juror. Does the
3 government have an objection to relieving the juror in
4 seat number 8?

5 ATTORNEY VAUGHN: No, Your Honor.

6 THE COURT: Okay.

7 ATTORNEY JUPITER: I don't have an objection.
8 I have an objection to replacing the juror. I don't
9 have an objection to them leaving.

10 THE COURT: That's what the Court will do, I'm
11 going to excuse the juror in seat number 8, have the
12 first alternate be part of the deliberating jury, and
13 then I will instruct them to begin their deliberations
14 anew. All right, so we'll have Ms. Brann bring in the
15 reconstituted jury, which includes the first alternate,
16 and we'll excuse the juror in seat number 8.

17 **[Recess.]**

18 **[Back on the record.]**

19 Good afternoon again, Members of the Jury.

20 THE JURORS: Good afternoon.

21 THE COURT: I know it's been a long day for
22 you. There are still some work that I need you to do,
23 though. That's why you were not discharged; you were
24 not excused. The deliberation that you undertook, I
25 need you to restart that process as you are newly

1 constituted. You may notice that there is at least one
2 new member to your group of 12. I need you to restart
3 your deliberations with respect to the matters before
4 you in this case. So, when I say restart it is as if it
5 hadn't happened yet, just so the record is very clear.
6 Whatever you undertook or feel you need to undertake to
7 assess, and make, and return a verdict here, you need to
8 do that as though you're starting from scratch, all
9 right? Remember there is no rush to reach a verdict.
10 Your verdict must be considered and deliberate.

11 Additionally, the new juror to your group should
12 feel as though he is beginning anew, not sort of
13 interposing or becoming someone who is interrupting an
14 ongoing process. All the previous instructions I gave
15 to you apply with equal force and effect now, all right?
16 So, none of the deliberations that took place before are
17 appropriate to be considered now. You need to start
18 anew with your newly constituted group, all right?

19 With that, return to the jury deliberation room
20 where you can begin your deliberations anew, all right?
21 Thank you.

22 THE CLERK: All rise.

23 **[The jurors were excused to deliberate.]**

24 Please be seated.

25 THE COURT: I believe at least two instances -- I

1 believe at least two instances with juror language
2 issues came up. One would be Rehelio Trant. I'm not
3 sure who tried that in the U.S. Attorney's Office. And
4 the other would be Mr. Hall, to whom Attorney Smith
5 referred. In both those cases we had jurors who had
6 language issues. It's not a new matter for this Court.
7 It happens from time to time, and sometimes it is
8 learned at the latest stages in the game.

9 What I am a little concerned with, and I hope this
10 is not the case, is that given some of the
11 representations I've heard here in court and some in the
12 in-camera examination that we had, my hope and
13 expectation is not that -- my hope and expectation is
14 that it is not the case that any party has a view when,
15 at any cost -- everyone is an officer of the court who
16 appears before the Court, and the Court expects everyone
17 to proceed accordingly. That is my hope and
18 expectation. And every utterance, I hope that there is
19 the level of candor that the Court expects from an
20 officer of the court.

21 And again, some of these inquires, it is to obviate
22 any issues from arising. And my hope is that the
23 parties will do what they can to aid the Court in making
24 sure that the fair administration of justice is what we
25 have at the end of the day. I feel compelled to say

1 that, especially given some of the things that
2 transpired, that we discussed this morning.

3 Counsel, the 7 minute rule is in effect. Thank
4 you.

5 THE CLERK: All rise. Court now stands in recess.
6 Please remain standing while His Honor leaves the
7 courtroom.

8 **[Off the record.]**

9 **[Back on the record.]**

10 The District Court is now in session. Please be
11 seated.

12 THE COURT: Good afternoon again, Members of
13 the Jury.

14 THE JURORS: Good afternoon.

15 THE COURT: I know you have been hard at work a
16 little bit longer than you probably anticipated. I also
17 understand that you have concluded your work. Let me
18 ask the foreperson to hand up the forms, please.

19 **[The verdict forms tendered to the Court for**
20 **inspection.]**

21 Okay, let me ask you, Madam Foreperson, to please
22 stand and read the verdict form as it is written.

23 Would the defendant please rise.

24 THE FOREPERSON: As to Count One, Wire Fraud,
25 and or -- I'm sorry, on or about October 19, 2010, as

1 charged in the Indictment, we find the defendant, Wayne
2 James, guilty.

3 As the Count Two, Wire Fraud, on or about October
4 22, 2010, as charged in the Indictment, we find the
5 defendant, Wayne James, guilty.

6 As to Count Three, theft concerning a program
7 receiving federal funds, we find the defendant, Wayne
8 James, guilty.

9 THE COURT: Thank you, Madam Foreperson.

10 ATTORNEY JUPITER: Request polling, Your Honor.

11 THE COURT: Yes. Ms. Brann.

12 MS. BRANN: Jurors, you have heard the
13 foreperson announce the unanimous jury verdict. I will
14 now ask you individually is this your independent
15 verdict. As I call your seat number please stand.

16 Seat 1, is this your independent verdict?

17 SEAT 1: Yes, it is.

18 THE CLERK: Seat 2, is this your independent
19 verdict?

20 SEAT 2: Yes, it is.

21 THE CLERK: Seat 3, is this your independent
22 verdict?

23 SEAT 3: Yes, it is.

24 THE CLERK: Seat 4, is this your independent
25 verdict?

1 SEAT 4: Yes.

2 THE CLERK: Seat 5, is this your independent
3 verdict?

4 SEAT 5: Yes.

5 THE CLERK: Seat 6, is this your independent
6 verdict?

7 SEAT 6: Yes.

8 THE CLERK: Seat 7, is this your independent
9 verdict?

10 SEAT 7: Yes.

11 THE CLERK: Seat 8, is this your independent
12 verdict?

13 SEAT 8: Yes.

14 THE CLERK: Seat 9, is this your independent
15 verdict?

16 SEAT 9: Yes.

17 THE CLERK: Seat 10, is this your independent
18 verdict?

19 SEAT 10: Yes.

20 THE CLERK: Seat 11, is this your independent
21 verdict?

22 SEAT 11: Yes, it is.

23 THE CLERK: Seat 12, is this your independent
24 verdict?

25 SEAT 12: Yes, it is.

1 THE CLERK: Judge, the jury has been polled.

2 THE COURT: Thank you, Ms. Brann. Members of
3 the Jury, let me thank you for your service. As I said
4 before, I know it's not easy what you do. And for all
5 that you have done the Court is appreciative. I know
6 the government is appreciative. I know the defense is
7 appreciative. Your community is appreciative. Your
8 country is appreciative. And as I said before, please
9 bear in mind that your service is not yet over. That
10 doesn't mean you will be called for the next trial, but
11 if you are called please answer the call.

12 Thank you so much and have a pleasant evening.

13 THE CLERK: All rise.

14 **[The jurors were excused.]**

15 Please be seated.

16 ATTORNEY JUPITER: Your Honor, can I address a
17 quick matter?

18 THE COURT: Yes.

19 ATTORNEY JUPITER: Your Honor, I would like to
20 reargue, not reargue, but one thing I did not state in
21 my motion for mistrial, one point that was, that came
22 out during the voir dire of the juror number 8 in
23 chambers was that, she mentioned that there were two
24 other people who spoke Spanish on this jury. So, I
25 think that is another issue. So, I renew my motion for

1 mistrial because that means this juror was relying on
2 the translation of someone other than a court certified
3 translator for the evidence in the case. So, I do think
4 that gives --

5 THE COURT: You said this juror? That means
6 that this juror?

7 ATTORNEY JUPITER: Juror number 8. The
8 original juror number 8.

9 THE COURT: Right. But juror in seat number 8
10 didn't take part in the verdict that was just rendered,
11 though.

12 ATTORNEY JUPITER: Oh.

13 THE COURT: That is, as I understand it, you
14 are asserting a claim that there is something wrong with
15 the verdict, correct? Or are you asserting that there
16 was something wrong with the verdict that was announced
17 previously, the one that wasn't recorded and the one for
18 which I substituted a juror? Which verdict is it you're
19 taking issue with?

20 ATTORNEY JUPITER: Your Honor, I take issue
21 with the Court's failure to grant a mistrial on my first
22 motion. I think that would, that would, that not only
23 if she was relying, if that was occurring where you had
24 jurors who were translating for her, that would entitle
25 Mr. James to a mistrial.

1 THE COURT: All right. Attorney Smith?

2 ATTORNEY SMITH: Yes, Your Honor.

3 THE COURT: What's the Government's position?

4 ATTORNEY SMITH: Your Honor, I beg to see what
5 relevance anything that occurred in the first
6 deliberation has to the actions that were just recorded,
7 that nothing that occurred in the first deliberation is
8 of issue any longer for this Court. The Court took all
9 corrective actions to ensure that the defendant, in
10 fact, received a verdict that was just and based on the
11 evidence. And by the replacement of juror number 8 by
12 the first alternate was, in fact, the course of action
13 that was required to ensure that defendant James
14 received an impartial verdict, and one that was based on
15 the evidence after a fair period of deliberation.

16 THE COURT: All right, thank you. I tend to
17 agree with the government. I don't see -- that's why I
18 was asking which verdict is it the defense takes issue
19 with. And it seems to me to the extent there was a
20 problem, the problem was remedied by moving the first
21 alternate into the space of an active juror. The only
22 question, as I said, it seems to me you're not the only
23 passionate one, the salient one would be whether the
24 jury had been discharged. The Court kept control over
25 the jurors. There was no mingling with others. There

1 was no discussion with others. And the jury
2 significantly was told to re-engage, restart the
3 deliberative process to render a verdict, that was just
4 received by the Court.

5 Now, with respect to the specific contention that
6 because there was an utterance by the juror in seat
7 number 8, that there might be others who speak Spanish,
8 that in and of itself is not an indicator that there is
9 a problem. In fact, there are many of us in this
10 courtroom who speak Spanish, but we also speak English
11 as well. That doesn't mean that somehow there is a
12 problem.

13 So, with respect to the juror in seat 8, just so
14 it's very, very clear on the record, juror number 8,
15 among other things, including failure to have the
16 requisite candor to the Court, the very first question
17 the Court asked that juror indicated that juror had a
18 problem with comprehending English. The first question
19 was, what is your juror number? And she responded by
20 saying her name. There were other questions throughout
21 that clearly indicated that she struggle with
22 comprehension. In the Court's mind she was not in a
23 position to certainly continue deliberating, certainly
24 not with an eye toward ensuring the unanimity that is
25 required. And the Court, I think as Attorney Smith

1 indicated, made every effort to make sure that unanimity
2 was not an issue. I do not believe it's an issue. And
3 to the extent the petition of defense is one to
4 reconsider its prior ruling, that petition is denied.
5 All right, Counsel, let me thank you for a well tried
6 case.

7 Will the defendant please rise. Mr. James, you've
8 been found guilty on your counts of conviction. Before
9 you are sentenced, a presentence investigation needs to
10 be conducted. The presentence investigation will be
11 disclosed to all parties on October 4, 2018; a
12 presentence conference is set for October 18, 2018;
13 position of the parties with respect to sentencing,
14 October 25, 2018; conference regarding sentencing
15 proceedings, November 9, 2018; final presentence report
16 will be disclosed to all parties and the Court November
17 14, 2018; and the sentencing hearing is set for December
18 20, 2018 at 9:00 a.m.

19 Between now and then, the defendant is remanded to
20 the custody of the United States Marshal Service pending
21 his sentencing.

22 ATTORNEY JUPITER: May I be heard on that, Your
23 Honor.

24 THE COURT: Yes.

25 ATTORNEY JUPITER: Your Honor, the statute

1 requires that the Court shall take the defendant into
2 custody, unless the Court makes a finding that there are
3 conditions of release that the Court can set that would
4 reasonably assure him to reappear for his sentencing.
5 The Court -- this is a case where Mr. James has been on
6 pretrial release since October of 2016.

7 THE COURT: But what's the standard that the
8 statute speaks to?

9 ATTORNEY JUPITER: I believe it's clear and
10 convincing evidence, Your Honor.

11 THE COURT: Okay. And is the exposure to your
12 knowledge exposure that would have the defendant serve a
13 portion of time, incarceration? Or, rather, is it a
14 sentence that would yield no term of incarceration?

15 ATTORNEY JUPITER: We certainly are going to
16 argue for no further incarceration. But under the -- I
17 think what the, what the statute alludes to basically is
18 that he is in a guideline category where he would be
19 exposed to further incarceration, and that is --

20 THE COURT: Does the statute even refer to the
21 guidelines?

22 ATTORNEY JUPITER: It doesn't refer to the
23 guidelines.

24 THE COURT: I didn't think so.

25 ATTORNEY JUPITER: But the statute -- it refers

1 to the statutes, and in terms of -- I guess that's my
2 short way of saying in terms that he is under the
3 guidelines will be, because he is under the guidelines
4 he is in the category where he is facing exposure to
5 prison time, that under the standards -- my short answer
6 to the Court is, yes, he does fit that category that
7 puts the burden on the defense. So, I was -- yeah, I'm
8 taking a lot of short cuts to get straight to the point.
9 The answer to your question is yes, the burden is on the
10 defense.

11 But I think based on Mr. James' history, no
12 violations of pretrial release; he has been on house
13 arrest, 24-hour house arrest since October of 2016; he
14 came to court for every hearing, flying here to St.
15 Thomas. Mr. James has made every appointment; he has
16 complied with all the terms of his release. He was
17 contacted by a witness in this case; he reported that to
18 counsel. Counsel spoke to the witness, the government,
19 with the government who claimed that that witness was
20 tampered with. I can assure the Court that witness did
21 not appear -- based on my conversations with that
22 witness, that witness did not appear, it wasn't anything
23 to do with Mr. James. It was to do with the fact that,
24 as the witness said, secrecy, that he was not allowed to
25 speak to Mr. James. Counsel wouldn't allow -- told him,

1 informed him, even though he wanted to speak to Mr.
2 James; he told the government that he needed to speak
3 with Mr. James. He told counsel that he needed to speak
4 with Mr. James; that he was informed that he can't do
5 that. That was the secrecy that he expressed in the
6 email as to why he didn't want to come here. So, Mr.
7 James has not been exemplary in terms of following the
8 rules of this Court. Mr. James has been on house
9 arrest, and house arrest has been very effective in
10 keeping in contact with Probation. And I think they are
11 clear. His conduct shows clear and convincing evidence
12 that he would not flee and he would show up for his
13 sentencing. He certainly came to court understanding
14 that going to jail was very possible. After a verdict
15 of guilty was rendered, was stated by the jury, even
16 though it wasn't a unanimous verdict, he had no problem
17 coming back here today two hours later where the
18 handwriting was on the wall. So, I think there are
19 clear and convincing -- there is evidence that he would
20 not flee. And the Court can continue with the stringent
21 conditions of release he is already set on.

22 THE COURT: All right. Attorney Jupiter, you
23 would agree that your defendant stands in a different
24 position now that there is a verdict of guilty?

25 ATTORNEY JUPITER: He stands in -- the law says

1 he stands in a different position, but the law still
2 says the Court has to make an independent finding. I
3 think the Court has all the evidence pointing towards
4 Mr. James is not going to flee. There is no indication
5 that he would, he wouldn't appear for his sentencing.
6 He has been staying with relatives since his release on
7 October 16th. And he has followed all of the rules of
8 his release, and he has come to court when asked to do
9 so, even on short notice. He has flown over here to St.
10 Thomas, flew over here with me. He flew over here with
11 his third-party custodian when he needed to. All
12 through the hurricane he has been accessible to his
13 probation officer. So, I don't think --

14 THE COURT: Let me ask you. Do I get to
15 consider at this juncture the efforts to secure Mr.
16 James, that is, to commence this action?

17 ATTORNEY JUPITER: Of course, that's something
18 that you consider, Your Honor. But I think in light of
19 the fact that -- first of all, Mr. James was in
20 detention for about three, four months before he was
21 released. So, he still has come to court understanding
22 what it is like to serve time in jail. He has come to
23 court for his trial every day. And he has come back to
24 court even after the jury indicated a guilty, 11 people
25 indicated a guilty verdict. So, I don't think that

1 there is any -- I think there is enough evidence in the
2 record that the Court should be convinced at this point,
3 even not withstanding the fact that he has been found
4 guilty and that he is, he is likely to get some jail
5 time, that he is, that he is still going to appear for
6 his sentence.

7 THE COURT: All right. I'm not so sure I'm
8 inclined, but let me hear Attorney Smith.

9 ATTORNEY SMITH: Your Honor, the defendant has
10 been convicted. We're requesting his immediate remand.
11 The defendant is no longer on pretrial release
12 conditions, not withstanding the claim made by defense
13 regarding his exemplary service. He did, in fact,
14 violate. We advised the Office of Probation that
15 defendant James violated his conditions of release
16 having contacted not just Mr. Van Troil who, based on
17 the timing of the various communications with Mr. James,
18 the first communication occurred before we arrived in
19 Denmark for his interview. And subsequent, the very
20 last communication occurred within days of him calling
21 to advise the United States that he no longer wished to
22 travel. So, the inference is far too strong that it
23 wasn't these communications, these various
24 communications with a very material witness, that caused
25 him not to cooperate with the United States by providing

1 testimony with Mr. James when prior to his contact with
2 Mr. James he was onboard one hundred percent.
3 Notwithstanding, Your Honor, the Court should also
4 consider the fact that Mr. James was a fugitive. It
5 took us a year to effectuate his arrest having filed
6 these charges and then several months between the time
7 it took for him to be extradited from Europe to face
8 charges. And to give him some kind of pat on the back
9 for being on home arrest is simply not appropriate
10 because he should have been incarcerated.

11 THE COURT: All right. Thank you, Attorney
12 Smith.

13 ATTORNEY SMITH: Thank you, Your Honor.

14 THE COURT: While I appreciate the defense's
15 position, I'm just not persuaded by it. The Court
16 doesn't find that there is clear and convincing evidence
17 that warrants the relief defense seeks, so the defendant
18 is remanded pending his sentencing.

19 Thank you, Counsel, for a well tried case.

20 THE CLERK: All rise. Court stands adjourned.

21 **[The above proceedings were concluded.]**

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

**This document is hereby certified
to be a true and accurate transcript
of the foregoing proceedings.**

s/ Persha Stoutt-Warner

PERSHA STOUTT-WARNER, RMR 8/27/2018

Official Court Reporter